IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Ludwig et al.
Appl. No.: 09/675,511
Filed: September 29, 2000
Title: APPARATUS AND METHOD FOR INACTIVATING VIRAL CONTAMINANTS
Art Unit: 1651
Examiner: I. Marx
Docket No.: F-4480 CONT

#10 J.G.J 1/8/03 (NE)

Commissioner for Patents
Washington, DC 20231

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated October 2, 2002, Applicants respectfully submit as follows:

REMARKS

In the Office Action, Claims 28-30, 32, 34, 38-47, 49 and 51 have been rejected under the judicially-created doctrine of obviousness type double patenting; Claims 28-30, 32, 34, 36 and 38-51 have been rejected under 35 U.S.C. § 112; Claims 40-42, 44, 45 and 49 have been rejected under 35 U.S.C. § 102; and Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected under 35 U.S.C. § 103. Applicants respectfully submit that the rejections are improper and thus should be withdrawn for the reasons set for below.

At the outset, Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected under 35 U.S.C. §103. More specifically, Claims 40-47, 49 and 51 have been rejected in view of U.S. Patent No. 5,445,629 ("*'629 Patent*") and *Rock* or *Walvik*; and Claims 28-30, 32, 34, 39-47, 49 and 51 have been rejected in view of U.S. Patent No. 6,207,107 ("*'107 Patent*"). The Patent Office primarily relies on the *'629 Patent* or the *'107 Patent* in support of the obviousness rejections.

Contrary to the Patent Office's position, the obviousness rejections are improper as a matter of law and fact. The *'629 Patent* and *'107 Patent* each issued after the above-identified patent application was filed. In this regard, the present application claims priority to Serial No. 08/350,398 filed on December 6, 1994. Therefore, the two references can only constitute 102(e) prior art. 35 U.S.C. § 103 provides in pertinent part: